IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket № 14167US02)

In the Application of:

Jeyhan Karaoguz, et al.	)	Electronically Filed on 01-APR-2010
	)	
Serial No. 10/658,161	)	
	)	
Filed: September 9, 2003	)	
	)	
For: METHOD AND SYSTEM FOR	)	
PROVIDING A SUPER CHANNEL IN A	)	
MULTI-BAND, MULTI-PROTOCOL	)	
HYBRID WIRED/WIRELESS	)	
NETWORK	)	
	)	
Examiner: Wanda Z. Russell	)	
Group Art Unit: 2416	)	
Confirmation No. 5714		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicant requests review of the final rejection in the above-identified application, stated in the final Office Action mailed on 01-04-2010 ("Final Office Action") with a period of reply through 04-04-2010. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

REMARKS

The present application includes pending claims 1-42, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter. Claims 1-42 stand rejected under 35 U.S.C. § 102(e) as being anticipated by

USP 6,643,292 ("Chapman"). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

I.   Chapman Does Not Anticipate Claims 1-42

Without conceding that Chapman qualifies as prior art under 35 U.S.C. § 102(e), the Applicant respectfully traverses this rejection as follows.

A.   Rejection of Independent Claim 1 under 35 U.S.C. § 102(e)

With regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Chapman does not disclose or suggest at least the limitation of "aggregating messages from a physical layer of each communication band and each communication channel associated with each of a plurality of protocols in a single multi-protocol layer of the multi-band, multi-protocol network," as recited by the Applicant in independent claim 1.

> The Final Office Action states the following:
>
> For claims 1, 11, 21, 31, and 41, Chapman teaches a method, a machine-readable storage (see processor and protocols in Fig. 8. It means that machine-readable storage is used), a system (see Fig. 8) for providing enhanced connectivity (packet data transport mechanism, see title) in a multi-band (see three customer equipments to Input module in Fig. 8, and customer digital data - voice and data, see col. 3, line 26, and col. 1, line 33. Those mean multi-band), multi-protocol network (TCP/IP, see Fig. 8, and DHCP, see col. 5, line 17, and RSVP, see col. 6, line 50. All are used for this system), comprising:
>
> aggregating messages of each communication channel from a physical layer (see Encapsulation Module 84 in Fig. 8; In Internet terminology, aggregating traffic streams by encapsulating them into a single IP stream is often called tunneling, see col. 2, lines 55-57) of each communication band and each communication channel (see three customer equipments to Input module in Fig. 8, and customer digital data, see col. 3, line 26. Each customer occupies a channel and each channel has voice and data that is multi-band) associated with each of a plurality of protocols (TCP/IP, see Fig. 8, and DHCP, see col. 5, line 17, and RSVP, see col. 6, line 59) in a single multi-protocol layer of the multi-protocol network (see 84 in Fig. 8, and It is commonly understood in the field of the present invention that a layer under the networking laver is called "transport" layer ... This is in contrast to the layered model of the OSI, see col. 2, lines 33-35 and lines 33-42);

identifying an optimal communication path from among said communication channel based on said single multi-protocol layer (in the packet transport network to allow the set-up of paths with a particular performance over and above best effort, see col. 6, lines 52-53); and

establishing a communication session using said identified optimal communication path (see Tx module 92 in Fig. 8).

See Final Office Action at pages 2-3. Referring to Fig. 8 of Chapman, the Examiner refers to "three customer equipments to input module in Fig. 8" and concludes that "each channel has voice and data that is multi-band." The Applicant respectfully disagrees. Chapman discloses that the input module 80 simply receives customer digital data flows (the three arrows going into the input module 80). **Even if such data flow includes voice and data, this does not mean that the input data flows are from multiple communication bands. The Applicant notes that, by definition, the term "multi-band" refers to communications on more than one frequency bands (see, e.g., page 488 of Modern Dictionary of Electronics, 7th Edition, 1999).** In fact, there is no support in Chapman that the input flows are "multi-band" communications. Therefore, Chapman does not disclose or suggest at least the limitation of "aggregating messages from a physical layer of each communication band and each communication channel associated with each of a plurality of protocols in a single multi-protocol layer of the multi-band, multi-protocol network," as recited by the Applicant in independent claim 1.

Furthermore with regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Chapman does not disclose or suggest at least the limitation of "identifying an optimal communication path from among said communication band and said communication channel based on said aggregated messages in said single multi-protocol layer," as recited by the Applicant in independent claim 1. Initially, the Applicant points out that the Examiner (in the above Final Office Action citation) has incorrectly cited the above sub-clause from claim 1. More specifically, the Examiner has omitted the above underlined language in her argument, which relies on col. 6, lines 52-53 of Chapman. Chapman, at col. 6, lines 52-53, states:

... in the packet transport network to allow the set-up of paths with a particular performance over and above best effort.

The Applicant fails to see the relevancy of this citation. In her previous argument (regarding "aggregating messages"), the Examiner has equated Applicant's "aggregated messages" to Chapman's encapsulated digital data flows received by input module 80. Even if we assume Chapman's encapsulated digital data flows are "aggregated messages" from a physical layer of each communication band and each communication channel associated with each of a plurality of protocols in a single multi-protocol layer of a multi-band, multi-protocol network (which they are not), the Examiner's argument is still deficient. More specifically, **Chapman does not disclose any identifying an optimal communication path (from the inputs to the module 80), based on such encapsulated digital data flows.** In fact, Chapman's encapsulation module 84 uses all inputs to module 80 and encapsulates all received digital data flows. Therefore, Chapman does not disclose or suggest at least the limitation of "identifying an optimal communication path from among said communication band and said communication channel based on said aggregated messages in said single multi-protocol layer," as recited by the Applicant in independent claim 1.

Furthermore with regard to the rejection of independent claim 1 under 35 U.S.C. § 102(e), the Applicant submits that Chapman does not disclose or suggest at least the limitation of "establishing a communication session using said identified optimal communication path," as recited by the Applicant in independent claim 1. The Examiner relies for support on Chapman's TX module 92 in Fig. 8. Chapman, however, discloses that the TX module 92 emits completed transport IP packets into the packet transport network, and by reading the destination address properly routes the packets to the appropriate destination transport access point. In other words, all digital data flows received by module 80, are encapsulated by respective destination headers and then routed by the TX module 92 to the appropriate destination transport access point. In other words, **there is no establishing of a communication session using an identified optimal communication path (e.g., a communication path selected from the input paths to module 80).** In fact, there is also no identification of optimal communication path, as previously explained. Therefore, Chapman does not disclose or suggest at least the limitation of "establishing a communication session using said

identified optimal communication path," as recited by the Applicant in independent claim 1.

Accordingly, independent claim 1 is not anticipated by Chapman and is allowable. Independent claims 11, 21, 31 and 41 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11, 21, 31 and 41 are also allowable over the references cited in the Final Office Action at least for the reasons stated above with regard to claim 1.

II.   Conclusion

The Applicant respectfully submits that claims 1-42 of the present application should be in condition for allowance at least for the reasons discussed above and request that the outstanding rejections be reconsidered and withdrawn. The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

Date: 01-APR-2010   By: ___/Ognyan I. Beremski/_____
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